

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK**

KIMBERLY MILLER, on behalf of	:	ECF CASE
herself and all others similarly situated,	:	
	:	No.: 1:24-cv-215
Plaintiffs.	:	
	:	
vs.	:	<u>ANSWER TO COMPLAINT</u>
	:	
OFFICESCAPES LLC,	:	
	:	
Defendant.	:	

Defendant, OfficeScapes LLC (“Defendant”), for its Answer to the Class Action Complaint filed by Plaintiff, Kimberly Miller (“Plaintiff”), states as follows:

INTRODUCTION

1. Defendant lacks knowledge of the truth of the allegations in Paragraph 1 of the Complaint and therefore denies same.
2. Defendant lacks knowledge of the truth of the allegations in Paragraph 2 of the Complaint and therefore denies same.
3. Defendant lacks knowledge of the truth of the allegations in Paragraph 3 of the Complaint and therefore denies same.
4. Defendant lacks knowledge of the truth of the allegations in Paragraph 4 of the Complaint and therefore denies same.
5. Defendant lacks knowledge of the truth of the allegations in Paragraph 5 of the Complaint and therefore denies same.
6. Defendant lacks knowledge of the truth of the allegations in Paragraph 6 of the Complaint and therefore denies same.

7. Defendant lacks knowledge of the truth of the allegations in Paragraph 7 of the Complaint and therefore denies same.

8. Defendant lacks knowledge of the truth of the allegations in Paragraph 8 of the Complaint and therefore denies same.

JURISDICTION AND VENUE

9. Paragraph 9 contains legal allegations for which no response is required. To the extent a response is required, Defendant lacks knowledge of the truth of the allegations and therefore denies same.

10. Paragraph 10 contains legal allegations for which no response is required. To the extent a response is required, Defendant lacks knowledge of the truth of the allegations and therefore denies same.

11. Paragraph 11 contains legal allegations for which no response is required. To the extent a response is required, Defendant lacks knowledge of the truth of the allegations and therefore denies same.

12. Paragraph 12 contains legal allegations for which no response is required. To the extent a response is required, Defendant lacks knowledge of the truth of the allegations and therefore denies same. Answering further, Defendant lacks knowledge as to Plaintiff's actions and where they occurred and Defendant denies it violated the rights of any party.

13. Paragraph 13 contains legal allegations for which no response is required. To the extent a response is required, Defendant lacks knowledge of the truth of the allegations and therefore denies same.

14. Paragraph 14 contains legal allegations for which no response is required. To the extent a response is required, Defendant lacks knowledge of the truth of the allegations and therefore denies same.

THE PARTIES

15. Defendant lacks knowledge of the truth of the allegations in Paragraph 15 of the Complaint and therefore denies same.

16. Defendant lacks knowledge of the truth of the allegations in Paragraph 16 of the Complaint and therefore denies same.

17. Defendant generally admits the allegations of Paragraph 17 though would dispute that its principal place of business is Cincinnati, Ohio.

18. Defendant generally admits the allegations of Paragraph 18.

19. Paragraph 19 contains legal allegations for which no response is required. To the extent a response is required, Defendant lacks knowledge of the truth of the allegations and therefore denies same.

NATURE OF ACTION

20. Defendant lacks knowledge of the truth of the allegations in Paragraph 20 of the Complaint and therefore denies same.

21. Defendant lacks knowledge of the truth of the allegations in Paragraph 21 of the Complaint and therefore denies same.

22. Defendant lacks knowledge of the truth of the allegations in Paragraph 22 of the Complaint and therefore denies same.

23. Defendant lacks knowledge of the truth of the allegations in Paragraph 23 of the Complaint and therefore denies same.

24. Defendant lacks knowledge of the truth of the allegations in Paragraph 24 of the Complaint and therefore denies same.

25. Defendant lacks knowledge of the truth of the allegations in Paragraph 25 of the Complaint and therefore denies same.

STATEMENT OF FACTS

Defendant's Barriers on Its Website

26. Defendant generally admits the allegations of Paragraph 26.
27. Defendant denies the allegations in Paragraph 27.
28. Defendant lacks knowledge of the truth of the allegations in Paragraph 28 of the Complaint and therefore denies same.
29. Defendant lacks knowledge of the truth of the allegations in Paragraph 29 of the Complaint and therefore denies same.
30. Defendant lacks knowledge of the truth of the allegations in Paragraph 30 of the Complaint and therefore denies same.
31. Defendant lacks knowledge of the truth of the allegations in Paragraph 31 of the Complaint and therefore denies same.
32. Defendant lacks knowledge of the truth of the allegations in Paragraph 32 of the Complaint and therefore denies same.
33. Defendant lacks knowledge of the truth of the allegations in Paragraph 33 of the Complaint and therefore denies same.
34. Defendant lacks knowledge of the truth of the allegations in Paragraph 34 of the Complaint and therefore denies same.
35. Defendant lacks knowledge of the truth of the allegations in Paragraph 35 of the Complaint and therefore denies same.
36. Defendant lacks knowledge of the truth of the allegations in Paragraph 36 of the Complaint and therefore denies same.

Defendant Must Remove Barriers to Its Website

37. Defendant denies the allegations in Paragraph 37.

38. Defendant denies the allegations in Paragraph 38.

39. Defendant lacks knowledge of the truth of the allegations in Paragraph 39 of the Complaint and therefore denies same.

40. Defendant lacks knowledge of the truth of the allegations in Paragraph 40 of the Complaint and therefore denies same.

41. Defendant lacks knowledge of the truth of the allegations in Paragraph 41 of the Complaint and therefore denies same.

42. Defendant denies the allegations in Paragraph 42 of the Complaint.

43. Defendant refers to the ADA statute for the complete text thereof.

44. Defendant denies the allegations in Paragraph 44 of the Complaint.

45. Defendant lacks knowledge of the truth of the allegations in Paragraph 45 of the Complaint and therefore denies same.

46. Defendant lacks knowledge of the truth of the allegations in Paragraph 46 of the Complaint and therefore denies same.

47. Defendant denies the allegations in Paragraph 47 of the Complaint.

48. Defendant lacks knowledge of the truth of the allegations in Paragraph 48 of the Complaint and therefore denies same.

49. Defendant lacks knowledge of the truth of the allegations in Paragraph 49 of the Complaint and therefore denies same.

CLASS ACTION ALLEGATIONS

50. Defendant lacks knowledge of the truth of the allegations in Paragraph 50 of the Complaint and therefore denies same.

51. Defendant lacks knowledge of the truth of the allegations in Paragraph 51 of the Complaint and therefore denies same.

52. Defendant lacks knowledge of the truth of the allegations in Paragraph 52 of the Complaint and therefore denies same.

53. Defendant lacks knowledge of the truth of the allegations in Paragraph 53 of the Complaint and therefore denies same.

54. Defendant lacks knowledge of the truth of the allegations in Paragraph 54 of the Complaint and therefore denies same.

55. Defendant lacks knowledge of the truth of the allegations in Paragraph 55 of the Complaint and therefore denies same.

56. Defendant lacks knowledge of the truth of the allegations in Paragraph 56 of the Complaint and therefore denies same.

FIRST CAUSE OF ACTION
Violations of the ADA, 42 U.S.C. § 12182 *et seq.*

57. Defendant repeats and incorporates herein its prior responses.

58. Defendant refers to the ADA statute for the complete text thereof.

59. The allegations in Paragraph 59 are legal conclusions to which no response is required. To the extent one is required, Defendant denies same.

60. Defendant refers to the ADA statute for the complete text thereof.

61. Defendant refers to the ADA statute for the complete text thereof.

62. Defendant refers to the ADA statute for the complete text thereof.

63. Defendant lacks knowledge of the truth of the allegations in Paragraph 56 of the Complaint and therefore denies same. Defendant denies it has violated any party's rights.

64. The allegations in Paragraph 64 are legal conclusions to which no response is required. To the extent one is required, Defendant denies same.

SECOND CAUSE OF ACTION

Violations of the NYSHRL

65. Defendant repeats and incorporates herein its prior responses.

66. Defendant refers to the statute for the complete text thereof.

67. The allegations in Paragraph 67 are legal conclusions to which no response is required. To the extent one is required, Defendant denies same.

68. The allegations in Paragraph 68 are legal conclusions to which no response is required. To the extent one is required, Defendant denies same.

69. Defendant denies the allegations in Paragraph 69.

70. Defendant refers to the statute for the complete text thereof.

71. Defendant refers to the statute for the complete text thereof.

72. Defendant lacks knowledge of the truth of the allegations in Paragraph 72 of the Complaint and therefore denies same. Defendant denies it has violated any party's rights.

73. Defendant denies the allegations in Paragraph 73.

74. Defendant denies the allegations in Paragraph 74.

75. Defendant denies the allegations in Paragraph 75.

76. Defendant denies the allegations in Paragraph 76.

77. Defendant denies the allegations in Paragraph 77.

78. Defendant denies the allegations in Paragraph 78.

79. Defendant denies the allegations in Paragraph 79.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The Complaint fails to state a claim for relief against Defendant upon which relief can be granted.

Second Affirmative Defense

Plaintiffs and/or some or all proposed class members lack standing to assert some or all of the alleged claims.

Third Affirmative Defense

Defendant's website is not a place of "public accommodation" as defined in 42 U.S.C. § 12181(7) or in the N.Y.C. Admin. Code, and is not a "sales establishment" as defined in the N.Y.C. Admin. Code.

Fourth Affirmative Defense

Defendant's website has at all relevant times been fully compliant with all applicable state and federal laws, rules and regulations.

Fifth Affirmative Defense

Plaintiff is not a suitable or adequate representative of the class that he seeks to represent.

Sixth Affirmative Defense

Plaintiff's alleged claims are barred by the doctrines of waiver, acquiescence, estoppel and/or laches.

Seventh Affirmative Defense

Plaintiff has failed to mitigate his alleged damages.

Eighth Affirmative Defense

Plaintiff's claims for declaratory and/or equitable relief are barred because Plaintiff has an adequate and available legal remedy for any of his alleged claims.

Ninth Affirmative Defense

Plaintiff's alleged claims are moot.

Tenth Affirmative Defense

To the extent that Plaintiff sustained any actionable damages, such damages were caused as a result of the actions and/or omissions of one or more non-parties to this action.

Eleventh Affirmative Defense

The Court lacks subject-matter jurisdiction over some or all of Plaintiff's claims.

Twelfth Affirmative Defense

Defendant serves notice that it intends to rely upon and assert any additional affirmative defenses that become known or available in the course of discovery and reserves the right to amend its Answer to assert any and all such affirmative defenses.

PRAYER FOR RELIEF

Wherefore, Defendant requests that the Court enter judgment in its favor as follows:

- A. Dismissal of the Complaint, with prejudice;
- B. An award to Defendant of its costs, reasonable attorney's fees, and expenses; and
- C. An award to Defendant of all further and additional relief as the court deems just and proper.

Respectfully submitted,

/s/ Michael P. Kruszewski

Michael P. Kruszewski

LEECH TISHMAN FUSCALDO & LAMPL, LLC

1001 State Street, Suite 1400

Erie, PA 16501

814.273.7100

mkruszewski@leechtishman.com

and

Brian P. Muething (*pro hac vice forthcoming*)

KEATING MUETHING & KLEKAMP, PLL

One East Fourth Street, Suite 1400

Cincinnati, Ohio 45202

513.579.6400

bmuething@kmklaw.com

Attorneys for Defendant OfficeScapes LLC